

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: October 19, 1998

TO : Dorothy Moore-Duncan, Regional Director  
Region 4

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Teamsters Local Union No. 429  
(Clover Farms)  
Case 4-CB-7962-2

536-5050-3393

536-5050-6754

This case was submitted for advice as to whether the Union violated Section 8(b)(1)(A) by processing internal charges against a member who reported to the Employer that another employee had pilfered documents from a supervisor's desk so the Union could use the documents in an upcoming arbitration proceeding against the Employer.

### FACTS

The Union and the Employer have an established collective-bargaining relationship. In spring 1996, the Union filed a grievance alleging that mechanic supervisors were performing unit work. Arbitration of the grievance was scheduled for July 22, 1996. One of the mechanic supervisors alleged to have performed such work was Lynn Schmeck. One of the mechanics supervised by Schmeck was Michael Gehret; he was the head mechanic as well as the Union's assistant shop steward.

At approximately 1 a.m. on July 12, 1996, Union steward Mark Reimert appeared at the facility and removed from, photocopied, and returned to a box on Schmeck's desk copies of driver vehicle inspection reports (DVIRs). Reimert apparently believed that the DVIRs would be helpful in proving the Union's case in the arbitration of the grievance described above. Gehret, who was the only mechanic on duty at that time, witnessed Reimert's actions.

The grievance described above was settled prior to the conclusion of the arbitration hearing, which had begun on July 26, 1996. However, while preparing for the hearing, the Employer learned from Gehret that Reimert had removed the DVIRs from Schmeck's desk without permission.

Consequently, on August 16, 1996, the Employer suspended Reimert for five days. Reimert then filed a grievance, which was the subject of an arbitration held on April 24, 1997. Gehret attended but did not testify at the hearing. However, according to the Union,<sup>1</sup> Schmeck testified that Gehret had told him that Reimert had taken the DVIRs from Schmeck's desk. On May 24, 1997, the arbitrator issued a decision upholding Reimert's discipline but reducing the suspension from five days to one day.

On July 28, 1997, Reimert filed internal Union charges against Gehret for "ratting" to the Employer that Reimert had removed the DVIRs from Schmeck's desk. The Union's Executive Committee held a hearing on Reimert's charge on August 11, 1997.<sup>2</sup> Reimert testified that when he removed the DVIRs he told Gehret what he was doing and Gehret said, "I see nothing." Gehret testified that he told Schmeck that Reimert had taken the documents. When Union counsel asked Gehret whether Schmeck has asked him for this information or whether he had volunteered it, Gehret said he could not recall whether he or Schmeck had raised the issue. Gehret further said that, as head mechanic, he was responsible for the workplace in Schmeck's absence. In its written decision, dated August 26, 1997, the Union concluded that "there was no evidence presented that Gehret was responding to an inquiry from the supervisor in reporting on his fellow union member." The Union then fined Gehret \$150, an amount equivalent to the economic loss that Reimert had suffered.

On September 8, 1997, Gehret sent a letter to Joint Council 53 appealing the Executive Committee's fine. He claimed, "I only told the employer that another employee removed some information which he should not have taken. . . . You certainly cannot expect me not to report a rules violation simply so another Union member can escape discipline." The Joint Council held a hearing concerning

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<sup>1</sup> There is no transcript of the arbitration hearing.

<sup>2</sup> The Local Union's by-laws permitted Gehret to have representation and to present witnesses, including those who were not members of the Union, at the hearing. However, supervisor Schmeck did not participate in the hearing.

Gehret's appeal on November 18, 1997. Schmeck accompanied Gehret to this hearing but was not allowed to testify because he was not a member of the Union. Joint Council 53 upheld the Executive Committee's decision.

In a letter dated March 26, 1998, Gehret appealed to the International Union, enclosing a signed statement from Schmeck dated March 25, 1998, in which he stated that he had asked Gehret about the DVIRs and that Gehret had not volunteered the information. Gehret's appeal is still pending.

Gehret has told the Region that he told Schmeck that he had seen Reimert going through papers at Schmeck's desk when Schmeck asked him if he had seen anyone at his desk. Gehret concedes that he testified at the Executive Committee hearing that he could not recall whether he or Schmeck first raised the issue of Reimert's actions at Schmeck's desk.

#### ACTION

The Region should issue a Section 8(b)(1)(A) complaint, absent settlement.

It is well established that a union does not violate the Act when it fines members for voluntarily reporting employee misconduct to their employer, absent any contractual requirement that the employees do so. See, e.g., Communications Workers Local 5975 (Western Electric), 192 NLRB 556 (1971).<sup>3</sup> However, a union is not free to fine a member because the member cooperates with an employer by testifying on the employer's behalf in arbitration hearings.<sup>4</sup> Similarly, a union may not fine members who cooperate with an employer in grievance processing or other pre-arbitral aspects of grievance-arbitration, i.e.,

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<sup>3</sup> See also Letter Carriers Branch 9 (Postal Service), 316 NLRB 1294 (1995); Transit Union Local Div. No. 1225 (Greyhound Lines, Inc.), 285 NLRB 1051, 1059-1060 (1987).

<sup>4</sup> See, e.g., Sheet Metal Workers Local 550 (Dynamics Corp.), 312 NLRB 229, 233 (1993).

situations in which it is likely that a grievance will be filed, because permitting such union discipline would likewise have an adverse effect on the contractual grievance-arbitration process.<sup>5</sup>

This holding is consistent with the Board's recognition of an employer's right "to compel its employees to submit to questioning concerning employee misconduct when the employer's inquiry is still in the investigatory stage and no final disciplinary action has been taken." Cook Paint & Varnish Co., 246 NLRB 646 (1979), enf. denied 648 F.2d 712 (D.C. Cir. 1981). Thus, a union cannot discipline a member for doing what the employer may lawfully require the employee to do, that is, cooperate in the employer's investigation of suspected employee misconduct.

Here, supervisor Schmeck asserts that suspicions led him to ask Gehret whether anyone had removed papers from his desk, not that Gehret volunteered the information. Gehret was thus obligated to cooperate with the Employer's investigation of possible employee misconduct or face discipline.

In these circumstances, the Union could not lawfully discipline Gehret for his response to Schmeck's question or, as noted below, the use of Gehret's information in Reimert's arbitration.

Furthermore, to the extent that the Region's investigation substantiates Gehret's assertion that, as head mechanic, he had the responsibility to report employee misconduct occurring in the absence of an Employer supervisor, the Union's fine also violates the Act because the fine thus affected his employment status. See, e.g., Teamsters Local 439 (University of the Pacific), 324 NLRB No. 168, slip op. at 1 fn. 1 (1997); J.H. McNamara, supra,

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<sup>5</sup> See, e.g., Dynamics Corp., supra, 312 NLRB at 333; Teamsters Local 379 (J.H. McNamara, Inc.), 284 NLRB 1413 (1987); Oil Workers Local 7-103 (DAP, Inc.), 269 NLRB 129 (1984).

284 NLRB at 1416-1417.<sup>6</sup> Under this rationale, the Union's fine of Gehret violated the Act regardless of whether Gehret voluntarily told Schmeck that Reimert had gone through papers on his desk or responded to Schmeck's question.

Finally, we conclude that the Union's action was unlawful as of July 28, 1997, when Reimert filed, and the Union began to process the internal charges that ultimately resulted in the levying of a fine against Gehret because he

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<sup>6</sup> Compare Dynamics Corp., supra, 312 NLRB at 234 fn. 11 (no evidence that employees, as group leaders, were required to report employee misconduct, so union discipline did not impede employees' job functions).

had cooperated with the Employer in its investigation of Reimert's misconduct.<sup>7</sup>

B.J.K.

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<sup>7</sup> See, e.g., Dynamics Corp., supra (violation found was "trying and fining employee/members"); Georgia-Pacific Corp., supra (same); DAP, Inc., supra (same). See also Sheet Metal Workers Local 104 (Losli International), 297 NLRB 1078 fn. 1 (1990) (In rejecting claim that General Counsel impermissibly delayed in litigating Section 8(b)(1)(A) charge attacking internal discipline of member, Board noted that when unfair labor practice charge was filed, union trial committee had considered internal charge but had not issued finding and recommendation and union membership had not yet upheld trial committee; thus, General Counsel knew only of union conduct -- processing of charge -- that was "arguably neutral." Once union membership affirmed trial committee, Board affirmed ALJ's finding that union violated Section 8(b)(1)(A) by instigating charges and fining employee). Compare IBEW Local 1547 (Redi Electric), 300 NLRB 604 (1990) (no violation where union processed internal charges against member, scheduled but postponed trial and then dismissed charges on learning that subject of charges was a statutory supervisor; Board rejected General Counsel's claim that processing of charges alone was unfair labor practice in absence of union discipline of member).